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June 9, 2005

BY E-FILING

The Honorable Joseph J. Farnan, Jr.
United States District Court
844 King Street
Wilmington, DE 19801

Re: Affymetrix, Inc. v. Illumina Inc.
C.A. No. 04-CV-901 JJF

Dear Judge Farnan:

I write on behalf of plaintiff Affymetrix, Inc. This case was filed on July 26, 2004.

The parties originally met and conferred in early 2005 and submitted proposed schedules on February 11 and February 15, 2005. At that time, Affymetrix proposed a trial date of May 2, 2006, and Illumina proposed a date of July 11, 2006.

Pursuant to the Court's recent direction, the parties once again met and conferred and were unable to reach agreement on the schedule. Therefore, Affymetrix's proposed schedule is attached. Affymetrix maintains its request for a trial date of May 2, 2006, as this is over 21 months after the filing of the complaint. Affymetrix has amended some of the dates in the earlier part of the schedule and requests status conferences with the Court in July and November to resolve any potential discovery disputes.

The parties need to have the pending protective order motion resolved so that document discovery can be completed and other discovery can proceed. Illumina currently prohibits Affymetrix's trial counsel, the Litigation Unit, from seeing confidential Illumina documents. Once the protective order issue is resolved, the parties can commence full-blown discovery and meet the deadlines proposed in Affymetrix's proposed schedule. If the Court needs a conference with counsel to resolve the protective order motion, Affymetrix will make itself available on whatever date the Court requires.

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Respectfully,

/s/ Maryellen Noreika

Maryellen Noreika (I.D. #3208)
mnoreika@mnat.com

MN:bls
Attachment

cc: Peter T. Dalleo, Clerk (By Hand Delivery)
Richard K. Herrmann, Esquire (By Hand Delivery)
Marcus E. Sernel, Esquire (By Fax)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AFFYMETRIX, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 04-901-JJF
)	
ILLUMINA, INC.,)	
)	
Defendant.)	

RULE 16 SCHEDULING ORDER

The parties having satisfied their obligations under Fed. R. Civ. P. 26(f), and the Court having conducted a scheduling conference pursuant to Fed. R. Civ. P. 16 and D. Del. LR 16.2(a) and (b),

IT IS ORDERED THAT:

1. **Pre-Discovery Disclosures.** The parties will exchange by **June 30, 2005** the information required by Fed. R. Civ. P. 26(a)(1) and D. Del. LR 16.2.

2. **Joinder of Other Parties.** All motions to join other parties shall be filed on or before **July 29, 2005**.

3. **Discovery.**

(a) Exchange and completion of contention interrogatories, identification of fact witnesses and document production shall be commenced so as to be completed by **August 12, 2005**.

(b) Maximum of 25 interrogatories, including contention interrogatories, for each side.

(c) Maximum of 25 requests for admission by each side, other than requests for authentication of documents.

(d) Maximum of 150 hours of deposition for each side, excluding expert depositions, unless otherwise agreed in writing by the parties or ordered by the Court. Each deposition of an individual witness shall be no longer than 14 hours.

(e) Fact discovery shall be completed by **November 18, 2005**.

(f) Reports from retained experts required by Fed. R. Civ. P. 26(a)(2) are due on issues on which a party bears the burden of proof by **December 19, 2005**; rebuttal expert reports are due by **January 13, 2006**.

(g) Any party desiring to depose an expert witness shall notice and complete said deposition no later than **February 10, 2006**, unless otherwise agreed in writing by the parties or ordered by the Court.

4. **Discovery Disputes.**

(a) A party seeking discovery which the opposing party refuses to provide shall file a motion (no brief) pursuant to Rule 37 of the Federal Rules of Civil Procedure and Local Rule 37.1. Said motion shall not exceed a total of four (4) pages. An answer to the Rule 37 motion, not to exceed four (4) pages, shall be filed within five (5) days of service of the motion. No reply is permitted.

(b) All papers shall set forth in a plain and concise manner the issue(s) in dispute, the party's position on the issue(s), and the reasons for the party's position.

(c) Upon receipt of the Answer, the movant shall notify Chambers by e-mail at jjf_civil@ded.uscourts.gov that the dispute is ready for decision.

(d) Upon receipt of the movant's e-mail, the Court will determine whether a conference is necessary and advise the parties accordingly.

(e) There is no limit on the number of Rule 37 motions a party may file, unless otherwise ordered by the Court.

5. **Amendment of the Pleadings.** All motions to amend the pleadings shall be filed on or before **September 16, 2005**.

6. **Case Dispositive Motions.** Any case dispositive motions, pursuant to the Federal Rules of Civil Procedures, shall be served and filed on or before **March 20, 2006**. Briefing shall be pursuant to D. Del. LR 7.1.2. No case dispositive motion may be filed more than ten (10) days from the above date without leave of the Court. The Court will issue a separate Order regarding procedures for filing summary judgment motions.

7. **Markman.** A Markman Hearing will be held on **March 15, 2006**, at 10:00 a.m. Briefing on the claim construction issues shall follow the same time periods for briefing as for dispositive motions, with plaintiff's opening claim construction brief to be filed and served on **February 17, 2006**. The Court, after reviewing the briefing, will allocate time to the parties for the hearing.

8. **Applications by Motion.**

(a) Any application to the Court shall be by written motion filed with the Clerk of the Court in compliance with the Federal Rules of Civil Procedure and the Local Rules of Civil Practice for the United States District Court for the District of Delaware (Amended Effective January 1, 1995). Any non-dispositive motion shall contain the statement required by D. Del. LR 7.1.1. Parties may file stipulated and unopposed Orders with the Clerk of the Court for the Court's review and signing. The Court will not consider applications and requests submitted by letter or in a form other than a motion.

(b) No telephone calls shall be made by Chambers.

(c) Any party with a true emergency matter requiring the assistance of the Court shall e-mail Chambers at: jjf_civil@ded.uscourts.gov. The e-mail shall provide a short statement describing the emergency.

9. **Status Conferences.** Status conferences regarding any outstanding discovery disputes shall be held with the Court on the following dates: **July 20, 2005 and November 2, 2005.**

10. **Pretrial Conference.** A Pretrial Conference will be held on **April 18, 2006**, at 4:00 p.m., in Courtroom No. 4B on the 4th Floor, Boggs Federal Building, Wilmington, Delaware. The Federal Rules of Civil Procedure and Rule 16.4 of the Local Rules of Civil Practice for the United States District Court for the District of Delaware (Amended Effective January 1, 1995) shall govern the pretrial conference.

11. **Trial.** Trial will commence at 9:30 a.m. on **May 2, 2006**, in Courtroom No. 4B on the 4th Floor, United States Courthouse, Boggs Federal Building Wilmington, Delaware.

12. **Other Matters.** (Any other matter a party desires the Court to address shall be submitted in writing at least four (4) business days before the Rule 16 Scheduling Conference).

13. **Settlement Conference.** Pursuant to 28 U.S.C. § 636, this matter is referred to Magistrate Judge Thyng for the purposes of exploring the possibility of a settlement.

Date

United States District Court Judge